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U.S. Department of Homeland Security

Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass, 3/F
425 Eye Street N.W.
Washington, D.C. 20536

SEP 24 2003

FILE:

Office: DALLAS, TX

Date:

IN RE: Applicant:

APPLICATION:

Application for Certificate of Citizenship under section 309 of the Immigration and Nationality Act, 8 U.S.C. § 1409.

ON BEHALF OF APPLICANT:

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Citizenship and Immigration Services (CIS) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.



Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, Dallas, Texas, and is now before the Administrative Appeals Office (AAO) on appeal. The case will be remanded for further action regarding the applicant's eligibility for United States citizenship.

The applicant was born on February 1, 1983, in Monterrey, Mexico. The record indicates that the applicant's father, Carlos Marquez, was born a United States (U.S.) citizen on July 14, 1953. The record contains no evidence to indicate that the applicant's mother, [REDACTED] has a claim to U.S. citizenship. The record indicates that the applicant was born out of wedlock and that his birth certificate contains no information regarding who his father was. On August 1, 1987, [REDACTED] publicly acknowledged the applicant as his son by amending the applicant's birth certificate to reflect [REDACTED] as the father. The applicant's parents married on October 27, 1995, and the applicant became a U.S. lawful permanent resident on December 1, 1997. The applicant seeks a certificate of citizenship pursuant to section 309 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1409, based on the claim that he acquired U.S. citizenship through his father.

The district director found that the applicant was not legitimated by his father until his parents married in October 1995. The district director concluded that because the applicant had failed to establish that he was legitimated by his father prior to November 14, 1986, he did not meet the requirements for U.S. citizenship pursuant to section 309 of the Act. The application was denied accordingly.

On appeal, the applicant, through counsel, asserts that the applicant's father [REDACTED] acknowledged the applicant as his son when he amended the applicant's birth certificate on August 1, 1987. Counsel also asserts that based on Texas law, [REDACTED] established voluntary paternity at the time of the applicant's birth. No evidence relating to Texas paternity laws was submitted.

The AAO finds that the district director erroneously concluded the applicant was not legitimated prior to his parent's marriage in October 1995. The record contains uncontested evidence that [REDACTED] acknowledged the applicant as his son by amending and adding his name to the applicant's birth certificate in August 1987, when the applicant was 4 years old.

The AAO additionally finds that the district director's conclusion that the applicant was required to be legitimated or acknowledged by his father prior to November 14, 1986, in

order to obtain U.S. citizenship under section 309(a) was also erroneous.

Prior to November 14, 1986, section 309 of the former Act required only that paternity be established by legitimation while the child was under twenty-one. Amendments made to the Act in 1986 provided that a new section 309(a) would apply to persons who had not attained 18 years of age as of the November 14, 1986 date of the enactment of the Immigration and Nationality Act Amendments of 1986, Pub. L. No. 99-653, 100 Stat. 3655 (INAA). The amendments provided further that the old section 309(a) applied to any individual who had attained 18 years of age as of November 14, 1986. Moreover, the amendments additionally provided that the old section 309(a) applied to any individual with respect to whom paternity had been established by legitimation prior to November 14, 1986. See section 13 of the INAA, *supra*. See also section 8(r) of the Immigration Technical Corrections Act of 1988, Pub. L. No. 100-525, 102 Stat. 2609.¹

In the present case, the applicant was born prior to November 14, 1986, however his father did not amend his birth certificate until August 1, 1987. The applicant must therefore establish that he qualifies for citizenship under the present rather than the old section 309(a).

The new section 309 of the Act states in pertinent part that:

¹ Section 23 of the Immigration and Nationality Amended Act, *supra*, states:

(2) The old section 309(a) shall apply -

(A) to any individual who has attained 18 years of age as of the date of the enactment of this Act [November 14, 1986], and

(B) any individual with respect to whom paternity was established by legitimation before such date.

(3) An individual who is at least 15 years of age, but under 18 years of age, as of the date of the enactment of this Act, may elect to have the old section 309(a) apply to the individual instead of the new section 309(a).

(4) In this subsection:

(A) The term "new section 309(a)" means section 309(a) of the Immigration and Nationality Act, as amended by section 13 of this Act and as in effect after the date of the enactment of this Act.

(B) The term "old section 309(a)" means section 309(a) of the Immigration and Nationality Act, as in effect before the date of the enactment of this Act.

(a) The provisions of paragraphs (c), (d), (e), and (g) of section 301, and of paragraph (2) of section 308, shall apply as of the date of birth to a person born out of wedlock if-

(1) a blood relationship between the person and the father is established by clear and convincing evidence,

(2) the father had the nationality of the United States at the time of the person's birth,

(3) the father (unless deceased) has agreed in writing to provide financial support for the person until the person reaches the age of 18 years, and

(4) while the person is under the age of 18 years-

(A) the person is legitimated under the law of the person's residence or domicile,

(B) the father acknowledges paternity of the person in writing under oath, or

(C) the paternity of the person is established by adjudication of a competent court.

In the present case, the record indicates that applicant's father was born a U.S. citizen on July 14, 1953. The evidence reflects further that [REDACTED] legitimated the applicant by amending his birth certificate on September 18, 1987, when the applicant was 4 years old, and that he and the applicant's mother married in 1995, when the applicant was 12 years old. The applicant has thus established that he meets requirements of section 309(a) of the Act.

Section 301(g) of the Act, 8 U.S.C. § 1401(g) states that the following shall be nationals and citizens of the United States at birth:

(g) a person born outside the geographical limits of the United States and its outlying possessions of parents one of whom is an alien, and the other a citizen of the United States who, prior to the birth of such person, was physically present in the United States or its outlying possessions for a period or periods totaling not less than five

years, at least two of which were after attaining the age of fourteen years: Provided, That any periods of honorable service in the Armed Forces of the United States, or periods of employment with the United States Government or with an international organization as that term is defined in section 1 of the International Organizations Immunities Act (59 Stat. 669; 22 U.S.C. 288) by such citizen parent, or any periods during which such citizen parent is physically present abroad as the dependent unmarried son or daughter and a member of the household of a person.

Section 12 of the Act of November 14, 1986, Pub. L. No. 99-653, 100 Stat. 3655, 3657, shortened the required period of U.S. residence for the citizen parent from the previous ten/five years. However, the shorter time period applies only to persons born on or after November 14, 1986. See section 8(r) of the Immigration Technical Corrections Act of 1988, *supra*. See also section 23 of the Immigration and Nationality Act Amendments of 1986, *supra*. The applicant must therefore establish that his father was physically present in the U.S. for 10 years between July 1953 and February 1983, and that at least 5 years were after July 1967, when [REDACTED] reached the age of 14.

The record in the present case contains one document pertaining to [REDACTED] physical presence in the U.S. during the above relevant time periods [REDACTED]. Social Security Statement reflects that [REDACTED] worked and earned varying amounts of money in the U.S. from 1970 to 1979, and again from 1981 to 1983.

Although the social security statement serves as evidence that [REDACTED] worked in the U.S. at some point during the above time periods, the statement does not establish where [REDACTED] worked, during what months or time periods [REDACTED] worked, or whether [REDACTED] resided in the United States during those years.

8 C.F.R. 341.2(c) states that the burden of proof shall be on the claimant to establish the claimed citizenship by a preponderance of the evidence. However, because the issue of [REDACTED] physical presence in the U.S. was not addressed in the district director's decision, and because the record submitted to the AAO is in the form of a temporary file which may contain an incomplete record, the case will be remanded to the district director for further review pertaining to the applicant's eligibility for U.S. citizenship under section 301(g) of the Act and to provide the applicant the opportunity to present additional evidence regarding his father's physical presence in the U.S. The



director will then enter a new decision which if adverse to the applicant is to be certified to the AAO without fee.

ORDER: The appeal is remanded for further action consistent with the above discussion.